

determine the days and hours which street and site lighting shall be furnished and the public restroom building shall be operated.

## 6. OPERATION AND MAINTENANCE OF THE YORKTOWN WHARF

A. Promotion of the Health and Safety of Users: The Board shall, to the extent that it deems desirable, take steps to provide for the health and safety of the users of the Yorktown Wharf.

B. Future Use of Freight Shed Building (formerly the Yorktown Post Office): The parties agree that if the National Park Service transfers the title to the freight shed building currently located on the Yorktown Wharf to the Trustees, the Board shall relocate the building closer to Water Street as generally depicted on the Conceptual Master Plan. Both parties agree that the Board may utilize said building for purposes that are open to the public and that are compatible with the historic character and commercial uses of the area, and in accordance with applicable zoning laws and the current Conceptual Master Plan. Any revenue derived from the use of said building shall be established and collected by the Board and deposited in the Yorktown Fund. The Trustees hereby grant and convey to the Board the exclusive right to use, occupy, control and maintain the building during the term of this agreement, together with the right to relocate and renovate the building as set out in Exhibit B attached hereto, beginning as of the effective date of this agreement or as of such time as title to the building reverts to the Trustees, if later, subject, however, to the obligation of the Board to renovate and maintain the building as set out in Exhibit B. At the Board's request, the Trustees shall also transfer title to the building to the Board for the duration of this agreement, or for such longer period of time as is specified in paragraph 10 (D), below. The parties also acknowledge and agree that in the event the building is deemed structurally impossible to move, or if it is damaged beyond practical repair during the relocation process, in the judgment of the Board's consulting engineers and contractors, the Board may demolish the freight shed and construct a replica of the building in the location depicted on the Conceptual Master Plan.

C. Wharf Demolition: It is agreed by the parties that subsequent to movement of the freight shed building, and in accordance with the Conceptual Master Plan, the Board will cause the Wharf to be demolished.

## 7. SPECIAL EVENTS

A. Special Events Sponsored by the Board: The Board shall have authority to sponsor and/or co-sponsor sailing regattas and various festivals and activities associated with the annual 4th of July and the Yorktown Day Celebration at the Yorktown

after the last debt payment, but the term of the agreement shall not extend beyond a total of 35 years without the express written approval of the Trustees.

- (2) In the event the Board has an opportunity to finance construction of any aspect of the Conceptual Master Plan with a grant that requires an assurance of Board control of the Yorktown Waterfront for a period longer than thirty (30) years, and the Trustees approve in writing the acceptance of those terms, the Agreement shall automatically extend for the duration of the grant-specified time limits.

C. The Board may terminate this Agreement at any time, with or without cause, upon giving the Trustees no less than one (1) year written notice to that effect. This Agreement shall automatically be renewed for additional ten (10) year terms unless written notice is given to either party at least one year prior to the expiration of the then – current term. Such notice to the Trustees shall be sufficient if given to any one of the Trustees and shall be sufficient as to the Board if given to the County Administrator or any member of the Board.

D. If this Agreement is terminated or not renewed for any reason by either party, as set out above, the Trustees agree to maintain the buildings, facilities and grounds, and the Board agrees to maintain the piers, in a condition equal to their condition at the time of termination for the duration of the useful economic life of such buildings, facilities and grounds, and piers (reasonable wear and tear excepted), and to maintain public access to and use of said buildings, facilities and grounds, and piers. In addition, the Trustees agree to honor the terms of all leases, licenses, or concessions applicable to such buildings or improvements and any conditions and assurances that may be associated with grants obtained in connection with the improvements, provided that the Trustees shall have had the opportunity to approve any terms or conditions of any lease, license, concession, or grant that shall continue in effect after the date of the expiration of the terms of this Agreement as set out in paragraphs 10.A and 10.B, above. Moreover, title to County-owned buildings and facilities, other than the breakwaters and piers, shall be transferred to the Trustees, and the Board shall execute any deeds, assignments, or other documents as may be reasonably required to evidence the conveyance to the Trustees of all such buildings and assignment of all associated leases and permits, and shall assign or convey to the Trustees any security deposits or advance payments of rent that may be held by the Board with respect to any such leases and permits. Notwithstanding the foregoing, in the event the County undertakes the renovation of the freight shed building through a program which takes advantage of state and/or federal historic building renovation tax credits, title to the building may be retained

by the County, or by a partnership or other entity created by the County, for such period of time not to exceed 45 years as may be required by applicable tax laws for the realization of such tax credits. During the term of this Agreement, the Board shall establish and maintain reserve accounts sufficient to pay for one year's estimated costs of maintenance and repair of any such improvements, or as may be required in accordance with the provisions of any applicable leases or permits, and upon the nonrenewal or termination of this Agreement shall transfer such accounts to the Trustees for the purpose of performing such maintenance or repair. The obligation of the Trustees to maintain buildings and other improvements pursuant to this paragraph shall only be to the extent of income derived from leases, permits and licenses with respect to such buildings and improvements, any reserve accounts transferred to the Trustees by the Board, and any other income (including grants) realized by the Trustees with respect to such buildings and improvements.

E. Upon such termination or non-renewal in accordance with this paragraph 10, the Yorktown Fund shall be distributed to the parties as follows: First, to the Trustees up to a sum equal to the amount by which the expected annual excess of operating and maintenance costs of any improvements constructed on the Yorktown Waterfront which are to be owned by the Trustees exceeds expected annual income from such improvements, as determined by a financial analysis of such income and costs. The financial analysis shall be performed by a person or company acceptable to both parties, and shall base estimates of income and costs on an analysis of income and costs of such improvements over the five previous years, as well as an analysis of the age and condition of the improvements and the likelihood and extent of any repairs that are expected to be incurred in the ensuing year. Second, the balance (if any) shall be disbursed to the Board.

#### 11. DEFAULT

In the event of a default by either party, the nondefaulting party may seek specific performance of this Agreement in the York County Circuit Court as the sole remedy for such default, in which event the prevailing party shall be entitled to an award of attorneys fees and costs incurred in the prosecution or defense of such proceeding.

#### 12. USE OF EASEMENT

The parties acknowledge that the Trustees own an easement for public passage 19.5 feet in width across a certain parcel of land owned by the Board and located at 400 Water Street, said easement having been created by a deed recorded in Deed Book 72, pages 441-442. The Trustees hereby convey to the Board the right to construct improvements, to install landscaping, and to implement alterations in the grade and contour of the ground within the area encompassed by the easement, provided that such